

SYSTEM OF PROTECTION OF THE INTERESTS OF INTELLECTUAL PROPERTY SUBJECTS

Babetska Ivanna

DOI: <https://doi.org/10.61345/1339-7915.2025.2.28>

Annotation. This article analyzes the concept and system of protection of the interests of intellectual property subjects under Ukrainian legislation. The system of normative and legal acts regulating the protection of intellectual property subjects' interests is outlined. A thorough analysis is provided of the content of the protection of intellectual property subjects' interests, both in broad and narrow terms.

The aim of the work. The aim of this article is to analyze the system for the protection of the interests of intellectual property subjects and identify the existing problems within this system, as well as propose solutions to address them. Achieving this goal requires an examination of the concept and peculiarities of the "protection" of the interests of intellectual property subjects, distinguishing it from the protection of industrial property rights, and identifying the existing issues in this domain.

Methodology. The methodology includes a comprehensive analysis and generalization of available scientific and theoretical materials, from which appropriate conclusions and recommendations are derived. The research methodology includes: terminological, dialectical, logical-semantic, logical-normative, and system-structural methods.

Results. The study defines the concept of "protection of the interests of intellectual property subjects." It is demonstrated that the protection of intellectual property interests in Ukrainian civil law represents a distinct legal model that combines elements of both positive regulation (state guarantees, legal recognition) and preventive regulation (registration, monitoring, contractual regulation, control), along with procedural protection mechanisms.

Conclusions. Ensuring a balanced consideration of the identified rights and interests through legal means in civil legislation will enhance the legal mechanism for protecting the interests of intellectual property subjects, preventing a significant number of conflicts, and ensuring the effective and fair resolution of disputes among civil law participants. The peculiarities of the mechanism for the protection of the interests of intellectual property subjects are determined by the specific nature of the area in which these interests and rights are exercised.

Key words: intellectual property, intellectual property objects, intellectual property rights holders, protection of the interests of intellectual property subjects.

1. Introduction.

In the current stage of civil law development, the role of intellectual property rights, their protection, and the defense of the rights and interests of authors are becoming increasingly important. This underscores the need to investigate the "protection of the interests of intellectual property subjects" as an independent object of intellectual property law research. The issue of the relationship between the protection and defense of rights and interests in intellectual property law remains highly significant, especially given the difficulty in comprehensively enumerating all the rights and/or interests that may belong to a subject.

2. Analysis of scientific publications.

The protection of intellectual property subjects' interests has been explored by well-known scholars, including A.V. Andrushko, I.E. Berestova, I.V. Venediktov, O.M. Vynnyk, R.Y. Hukasyan, V.P. Grybanov, V.A. Horbunov, H.Z. Ohnev'uk, O.P. Radkevich, N.M. Myronenko, O.I. Kharytonov, and Y.O. Kharytonov. Analyzing their works, it is evident that the detailed characterization of the concept of protection of the interests, as opposed to rights, of intellectual property subjects under Ukrainian civil law has not been sufficiently developed.

3. The aim of the work.

The objective of this article is to analyze the system of protection of the interests of intellectual property subjects and to identify the problems existing within this system, along with proposed solutions. To achieve this goal, it is necessary to examine the concept and peculiarities of the protection of intellectual property subjects' interests, differentiate it from the protection of rights, and explore the specific challenges in this area.

4. Review and Discussion.

Interests are the most significant for the goal-oriented activities of a subject, as they integrate both external and internal elements, as well as subjective and objective factors [1, p. 119]. When a subject faces specific issues regarding the protection of intellectual property (IP) objects, it is in this context that an interest arises. The protection of intellectual property interests brings forth a series of questions, such as a comprehensive overview of intellectual property interests and attracting attention to IP protection. There are challenges in creating material, socio-economic, legal, and other interests under conditions conducive to active intellectual activities [2].

An important issue, in our opinion, is the protection of the interests of intellectual property subjects as defined by law. While legislation outlines a list of objects under protection, this remains a general understanding. This norm could reflect an expanded concept of interest protection as a distinct legal institution, effective even before the infringement of the right itself. The protection of interest does not necessarily need to be explicitly stipulated by law in the form of a subjective right. In 2004, the Constitutional Court of Ukraine recognized interest as an independent object of legal protection (Decision of 01.12.2004 No. 18-rp/2004) [3]. This position has been further developed by contemporary scholars such as A.A. Katrenko, who stated that the protected interest is "conscious legal behavior aimed at achieving a specific result within the framework of legally permissible actions" [4, p. 171].

Ukrainian civil law defines the protected interest of intellectual property subjects not only as a form of individual use of intangible assets but as integral components of a legal mechanism capable of influencing, in advance, relations related to the transferability of intellectual property objects.

The general principles of interest protection for intellectual property subjects are outlined in the provisions of the Constitution of Ukraine, the Civil Code of Ukraine, subordinate regulatory legal acts, and international legal instruments. These require not only the protection of subjective rights but also the creation of appropriate conditions for the productive realization of those same legitimate interests of the subjects.

Since interest plays a role as a stimulus for the formation of subjective rights, the directions of protection may encompass not only judicial and administrative defenses but also digital, informational, institutional, contractual, customs, and regulatory mechanisms of influence [5, p. 105].

The protection of intellectual property interests is carried out by the current legislation of Ukraine and international legal instruments ratified by the Verkhovna Rada of Ukraine. Currently, the

following normative legal acts regulate the protection of intellectual activity: the Constitution of Ukraine, the Civil Code of Ukraine, the Law of Ukraine “On Copyright and Related Rights,” the “Law on Protection of Trademarks,” the “Law on Protection of Inventions and Utility Models,” the “Law on Protection of Industrial Designs,” the “Law on Protection of Geographical Indications,” the “Law on Protection of Plant Varieties,” etc. In the absence of a national regulatory norm, international law ratified by Parliament is applied. It is important to note that at the beginning of Russia’s full-scale invasion of Ukraine, on February 24, 2022, problems arose in the National Intellectual Property Authority, including limitations on submitting documents to the organization to extend the period of intellectual property rights [6].

The development of the intellectual property institution is rapidly evolving, and the list of interests protected under IP law is continuously expanding. Once one issue is resolved, another arises. This is entirely natural [2]. To understand what falls under the protection of intellectual property interests, it is necessary to refer first to the Civil Code of Ukraine, which defines intellectual property rights as “the right of an individual to the result of intellectual, creative activity, or to another object of intellectual property rights as defined by this Code and other laws” [7].

Furthermore, it is worth noting the list of intellectual property objects that are under protection:

- Literary and artistic works;
- Computer programs;
- Data compilations (databases);
- Performances;
- Phonograms, videograms, and broadcasting programs;
- Scientific discoveries;
- Inventions, utility models, industrial designs, semiconductor chip topographies;
- Rationalization proposals;
- Plant varieties, animal breeds;
- Commercial (trade) names, trademarks (marks for goods and services);
- Geographical indications; trade secrets [7].

From this list, the protected interest of intellectual property subjects can be defined as the ability of the intellectual property holder to proactively realize a particular intangible intellectual property object (such as a trademark, musical compositions, or computer programs), which may fall under protection in the future, regardless of the existence of a subjective right. This realization must align with the legal framework and must not contradict the law, and it must be recognized as an object of protection under civil law.

A.A. Katrenko provided her interpretation, describing the protected intellectual property interest as “conscious legal behavior by an interested party in civil-legal relations, driven by their internal beliefs and aimed at achieving specific goals regarding the satisfaction of needs for material or intangible benefits derived from intellectual property, provided that there are no direct prohibitions on achieving such benefits and, in case of obstacles to satisfying such needs, protection is provided in the forms specified by law” [4, p. 171].

In our opinion, Katrenko’s definition clearly elucidates the concept of a legally protected intellectual property interest, and we fully agree with this interpretation, as it provides a comprehensive understanding of why intellectual property interest protection is applied. P.V. Pashko provided his definition of the purpose of protecting intellectual property interest, stating: “it is to motivate the legal mechanism to prevent third parties from exploiting the results of intellectual activity for commercial purposes” [8].

It is essential to note that rights and freedoms are always protected, but they are only defended when they are violated. In this case, protection can be considered as one of the forms of defense, and vice versa. According to part 2 of Article 424 of the Civil Code of Ukraine, the legislator mentions the "interest" in intellectual property, specifically: "the law may establish exceptions and limitations on the property rights of intellectual property, provided that such limitations and exceptions do not create significant obstacles to the normal realization of property rights and the exercise of the legitimate interests of the subjects of these rights" [7].

According to paragraph 5 of part 1 of Article 3 of the Law of Ukraine "On the Protection of Rights to Inventions and Utility Models": "the implementation of international cooperation in the field of intellectual property rights protection and the representation of Ukraine's interests on the protection of rights to inventions and utility models in international organizations" [9]. This norm highlights the interests of not only individuals but also the state, which is also present in civil-law relations with other subjects of public authority who directly work for the state. The legally protected interest regulates that area of legal regulation into which the legislator considers it inadvisable or impossible to delve for subjective rights [3].

When combining interest and subjective right, subjective right becomes a legal instrument for the realization of the same interest. A more complex situation arises when the interest exists, but the corresponding instrument in the form of a subjective right is absent.

T. Chernadchuk stated that protection is "a substantive, institutional phenomenon, while defense is instrumental and functional. Moreover, protection and defense serve as a means to secure both subjective rights and legitimate interests. It is worth noting that the protection of civil rights may also serve as the primary goal of defense" [10, p. 26].

In our opinion, the essence of intellectual property interest protection can be divided into three components:

Legal recognition of interest as an object of protection. Interest is recognized as an object of protection as an independent legal value, even without the fact of infringement; the Constitutional Court interprets this aspiration as a legitimate basis for protection.

Preventive measures (establishing the legal basis). The registration of intellectual property objects (trademarks, patents, and industrial designs) creates a formal basis for the interest; contracts establish the terms of use of IP objects, protecting interest even outside judicial disputes; monitoring and control help identify risks of violations before they occur.

Procedural mechanisms for realizing the interest. The law may define a violation of interest as a basis for approaching the court (e.g., civil, administrative, or commercial disputes). Interest in civil law is the stimulus that enables a subject of legal relations to exercise their rights, where the subject decides what action to take in these relations.

N.S. Kuznetsov expressed his opinion: "Civil law allows both individuals and various associations to realize their initiative, based on a legal level and unhindered will expression, as well as initiatives aimed at realizing initially private interests" [11, p. 23].

Thus, the conclusion can be drawn from the above that the protection of intellectual property interests in Ukrainian civil law is a special legal model combining elements of positive regulation (state guarantees, normative support, legal recognition), aspects of preventive regulation (registration, monitoring, contractual regulation, control), and tools for procedural defense. Considering the above, we propose an authorial definition of protected intellectual property interest, namely as: the ability of the subject to proactively realize intangible and material intellectual property objects, regardless of the existence of a subjective right, provided that this realization does not contradict current legislation and is recognized as an object of legal protection (protection).

Attention is drawn to the fact that, after collaborating with international experts in the field of intellectual property (IP), an assessment was conducted, and methodological assistance was

provided with the support of international organizations to establish an intellectual property protection system. As a result of this collaboration, on June 1, 2016, the “Concept for Reforming the State System of Legal Protection of Intellectual Property in Ukraine” [12] was introduced. This concept was further strengthened in 2019 by the National Strategy for the Development of the Intellectual Property Sector, which led to discussions, including parliamentary hearings on the topic “Building an Effective System of Intellectual Property Protection in Ukraine,” held on December 16, 2019. The hearings were published in the “Parliamentary Hearings” journal (No. 5, 2019) by the Verkhovna Rada of Ukraine. [13]

It is important to note that the person who holds the intellectual property rights may take proactive steps to protect their creation through intellectual activities.

5. Conclusions:

The issues related to the effective protection of intellectual property interests in Ukraine are becoming increasingly relevant due to the rapid development of information technologies and the widespread distribution of digital products. Analyzing the current legislation, judicial practices, and numerous international legal instruments, it can be concluded that both our domestic legislation and the legislation of other countries require significant improvements.

An interest in the intellectual property field represents a conscious need for the realization, acquisition, or protection of one’s intangible and/or tangible rights. This interest can be either lawful or unlawful, for example, when there is an attempt to appropriate an intellectual property object. The Civil Code of Ukraine and other legal instruments related to intellectual property provide a list of means for protecting the interests of intellectual property holders.

Since the beginning of the full-scale invasion of the Russian Federation into Ukraine, a considerable number of challenges have arisen, including delays or suspensions in the operation of state registers, databases, and restrictions on access to the National Intellectual Property Office. All these issues require regulation in light of unforeseen circumstances, with Ukraine beginning to manage and gradually restore these systems.

A notable example is the extension of protection periods and the continuation of certificates for intellectual property objects in the event of unforeseen circumstances. Additionally, it should be emphasized that the development of artificial intelligence (AI) and its capacity to create intellectual property objects raises the need to protect authorship in intellectual property, for example, when AI generates works. The need for liability in the NFT (Non-Fungible Token) domain, as well as in digital platforms, must also be addressed.

In such rapid conditions of development in the intellectual property sector, it is crucial to ensure the protection of intellectual property objects for their rightful holders. What once was merely a fantasy has now become reality, and virtual intellectual property objects and their holders must be protected.

In conclusion, the protection of the interests of intellectual property holders is not just about the application of specific norms; it is about safeguarding the economy of the state, attracting new authors and inventors into the intellectual property field.

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Ivanna Babetska,
*PhD in Law, Associate Professor,
Department of Law and Public Administration
King Danylo University,
Ivano-Frankivsk, Ukraine
E-mail: ivanna.babetska@ukd.edu.ua
ORCID: 0000-0003-3094-5964*